

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

RICK OLMSTEAD,

Plaintiff,

and

**SECRETARY OF THE NAVY, RAY
MABUS,**

Defendant.

No. 13-CV-05051

**STIPULATED MOTION TO
MOVE HEARING DATE FOR
PLAINTIFF'S MOTION FOR AN
ORDER OF DISMISSAL
PURSUANT TO F.R.C.P. RULE
41(a)(2)**

Plaintiff Rick Olmstead (hereinafter referred to as "Plaintiff") and Defendant Secretary of the Navy Ray Mabus (hereinafter referred to as "Defendant") hereby file a Stipulated Motion to Move the hearing date for Plaintiff's Motion for an Order of Dismissal pursuant to Federal Rules of Civil Procedure, Rule 41(a)(2) from January 9, 2015 to December 26, 2014.

I. PROCEDURAL POSTURE

Plaintiff filed a Complaint for Damages on January 13, 2013. On April 29, 2013, Defendant filed an answer denying the allegations and preserving identified affirmative defenses. Defendant filed a Motion to Dismiss and/or Summary Judgment, which was granted on March 10, 2014. The Court also granted Plaintiff's Motion for Leave to Amend the Complaint on March 21, 2014, thereby allowing Plaintiff to include a single claim against

1 Defendant for retaliation. Plaintiff filed an Amended Complaint on March 27, 2014. Plaintiff
 2 later filed a Motion for Leave to file a Second Amended Complaint, which was granted on May
 3 21, 2014. The Parties engaged in discovery proceedings until Defendant filed a Motion to
 4 Dismiss and/or Summary Judgment on December 10, 2014. The hearing date for Defendant's
 5 Motion is currently scheduled for January 2, 2015. On December 16, 2014, Plaintiff filed a
 6 Motion for an Order of Dismissal pursuant to Federal Rules of Civil Procedure, Rule 41(a)(2).
 7 The hearing date is currently scheduled for January 9, 2015.

8 **II. ARGUMENT**

9 "It is well-established that district courts have inherent power to control their
 10 dockets..." *See, Atchison, Topeka & Sante Fe Ry. Co. v. Hercules, Inc.*, 146 F.3d 1071, 1074
 11 (9th Cir. 1998). Here, the Parties have stipulated to move the hearing date for Plaintiff's
 12 Motion for an Order of Dismissal pursuant to Federal Rules of Civil Procedure, Rule 41(a)(2),
 13 from its currently scheduled date of January 9, 2015 to December 26, 2014. The Parties make
 14 this request so that the Court can rule on Plaintiff's request for voluntary dismissal prior to
 15 deciding on Defendant's Motion to Dismiss and/or Summary Judgment in an effort to avoid
 16 wasting Court time and resources. As of the date of this Stipulated Motion, Plaintiff has not
 17 filed a response to Defendant's pending Motion to Dismiss and/or Summary and Defendant has
 18 not filed a response to Plaintiff's Motion for an Order of Dismissal pursuant to F.R.C.P. Rule
 19 41(a)(2).

20 **III. CONCLUSION**

21 For the aforementioned reasons, the Parties respectfully request this Court to grant the
 22 Stipulated Motion to Move the hearing date for Plaintiff's Motion for an Order of Dismissal
 23 pursuant to F.R.C.P. Rule 41(a)(2)

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1 DATED this 19th day of December, 2014.

2 United States Attorney

Wong Fleming

3 /s/ Marion J. Mittet, Esq.

/s/Dianna Caley, Esq.

4 Marion J. Mittet, WSBA No. 12758
5 Attorney for Defendant

Diana Caley, WSBA No. 23413
Attorney for Plaintiff